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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

NANINE NANEZ,

Defendant and Appellant.

B233735

(Los Angeles County
Super. Ct. No. KA085671)

APPEAL from a judgment of the Superior Court of Los Angeles County, George Genesta, Judge. Modified, and as modified, affirmed.

Jeffrey S. Kross, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Roberta L. Davis and Susan S. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

At a sentencing hearing in 2009, the trial court issued a joint and several restitution order to defendant and appellant Nanine Nanez and her codefendant Henry Solomon. At a resentencing hearing in 2011, however, the court failed to repeat that the restitution order was joint and several. Nanez now appeals, contending that the abstract of judgment should be corrected to reflect joint and several liability. We agree that the abstract of judgment should be corrected, and we therefore modify the judgment.

FACTUAL AND PROCEDURAL BACKGROUND¹

At Nanez’s original sentencing hearing on August 28, 2009, the trial court sentenced her to 47 years in prison after she was convicted of, among other things, robbery with gang and weapon enhancements. The court also ordered Nanez to pay victim restitution:

“The court: . . . [¶] Actual restitution in this matter, the court will retain jurisdiction over that matter. The issue is whether—if, in fact, the People give notice and request for restitution is whether your client waives your appearance, appear by counsel to represent her . . . on any restitution hearing, Mr. Uhalley.

“Mr. Uhalley: May I have just a moment, Your Honor?

“The court: *That will be a joint and several order.*” (Italics added.)

The trial court then recalled the case so that Nanez’s codefendant, Solomon, could be present. After the prosecutor asked the court to retain jurisdiction over the matter to determine the amount of restitution, the court said, “All right, then. The court will retain jurisdiction over the issue of restitution. *Any restitution order will be joint and several, meaning Ms. Nanez would also be responsible.*” (Italics added.)

¹ Because the issue on appeal concerns only the restitution order, we do not state the facts underlying Nanez’s crimes.

Thereafter, Nanez appealed the judgment. On November 8, 2010, in *People v. Solomon et al.* (B218756 [nonpub. opn.]), we remanded the matter for resentencing but otherwise affirmed the judgment. On remand, the trial court resentenced Nanez to a total term of 28 years 8 months in prison. The court also held a restitution hearing on May 27, 2011, at which it found that “the Victim Compensation Government Claims Board is entitled to reimbursement for the claims paid. The court is signing the order for \$6,692, plus [t]en percent interest per year from the date of sentencing.” The trial court did not mention joint and several liability.

DISCUSSION

Although the trial court ordered in 2009 that Nanez would be jointly and severally liable with her codefendant Solomon for any direct victim restitution, the trial court failed to repeat that joint and several order at the subsequent hearing in 2011. Nanez now contends that the judgment should be amended to include such an order.

Penal Code section 1202.4 governs direct victim restitution. Subdivision (f) of that section neither prohibits nor authorizes joint and several liability, but courts have interpreted the section as permitting it. (See, e.g., *People v. Madrana* (1997) 55 Cal.App.4th 1044, 1050-1051; *People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1535; *People v. Neely* (2009) 176 Cal.App.4th 787, 800.) Here, the trial court stated, at the original sentencing hearing in 2009, that the restitution order would be joint and several. Although the court did not repeat that joint and several order at the subsequent 2011 restitution hearing, the court also did not rescind it. We therefore conclude that the court exercised its discretion to impose restitution joint and several liability and nothing in the record shows an intent to change its order. The clerical error in failing to impose it at the 2011 hearing may be corrected at any time, and the issue has therefore not been forfeited. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)²

² Nanez has withdrawn an additional contention that the abstract of judgment does not properly list the enhancements actually imposed.

DISPOSITION

The abstract of judgment shall be modified to reflect that the restitution order of \$6,692 plus interest shall be joint and several. The clerk of the superior court shall forward the corrected abstract of judgment to the Department of Corrections. The judgment is otherwise affirmed as modified.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.